

TODD KIM
Assistant Attorney General
DANIEL PINKSTON
Environmental Defense Section
Environment & Natural Resources Div.
U.S. Dept. of Justice
999 18th Street, South Terrace, Suite 370
Denver, CO 80202
(303) 844-1804
Daniel.pinkston@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

)
CALUMET MONTANA REFINING, LLC,)
)
Plaintiff,) Case No. 4:24-cv-62-BMM
)
v.)
)
MICHAEL S. REGAN, in his official)
capacity as the Administrator of the)
United States Environmental Protection)
Agency,)
)
Defendant.)

)

**DEFENDANT'S
STATEMENT OF
UNDISPUTED AND
DISPUTED FACTS**

Defendant ("EPA") submits the following Statement of Undisputed and Disputed Facts regarding Plaintiff's Motion for Summary Judgment and EPA's Cross-Motion for Summary Judgment. The text of Plaintiff's Statement of Undisputed Facts, ECF 31, is set forth below, followed by EPA's response:

1. Calumet owns a petroleum refinery in Great Falls, Montana. That refinery's average daily aggregate crude oil throughput does not exceed 75,000 barrels. Statement of Stipulated Facts, ECF 25, at 1 (Sept. 16, 2024). **Not disputed.**

2. Michael S. Regan is the administrator of the United States Environmental Protection Agency ("EPA"). ECF 25, at 2. **Not disputed.**

3. The Clean Air Act requires EPA to decide petitions for small refinery hardship exemptions within 90 days of receiving them. ECF 25, at 2. **Not disputed.**

4. EPA received Calumet's 2023 small refinery hardship petition on December 14, 2023. And EPA was required to decide Calumet's small refinery hardship petition by March 13, 2024. ECF 25, at 2. **Not disputed.**

5. EPA did not decide Calumet's small refinery hardship petition by March 13, 2024. EPA still has not decided Calumet's small refinery hardship petition. ECF 25, at 2; Answer ¶ 27. **Not disputed.**

6. The deadline for Calumet to demonstrate compliance with its 2023 RFS obligation was March 31, 2024. ECF 25, at 2. **Not disputed.**

7. The deadline for Calumet to demonstrate compliance with its 2024 RFS obligation will be March 31, 2025. ECF 25, at 2. **Not disputed.**

8. On April 25, 2024, EPA received another letter from Calumet notifying

it that Calumet intended to sue EPA for its failure to decide Calumet’s small refinery hardship petition by March 13, 2024. ECF 25, at 2. **Not disputed.**

9. The resolution of Calumet’s small refinery hardship petitions for compliance years 2018–2022 is uncertain. Declaration of Bruce Fleming (“Decl.”) ¶ 7. **Not disputed.**

10. Calumet carries its unresolved RFS compliance obligations on its books as debt. Decl. ¶¶ 16–22. **EPA is unable to admit or deny this allegation. The parties agreed that discovery in this case was not warranted, so EPA has not taken discovery regarding the allegations of this paragraph.**

11. Holding that debt severely harms Calumet. Decl. ¶¶ 20–21. **EPA is unable to admit or deny this allegation. The parties agreed that discovery in this case was not warranted, so EPA has not taken discovery regarding the allegations of this paragraph.**

12. EPA failure to timely decide Calumet’s 2023 hardship petition increases the debt Calumet must hold and therefore increases that harm to Calumet. Decl. ¶22. **EPA is unable to admit or deny this allegation. The parties agreed that discovery in this case was not warranted, so EPA has not taken discovery regarding the allegations of this paragraph.**

Respectfully submitted,

TODD KIM
Assistant Attorney General
Environment & Natural Resources Division

Dated: Oct. 29, 2024

By: /s/ Daniel Pinkston
DANIEL PINKSTON
Environmental Defense Section
Environment & Natural Resources Division
U.S. Dept. of Justice
999 18th Street, South Terrace, Suite 370
Denver, CO 80202
(303) 844-1804
Daniel.pinkston@usdoj.gov

Of Counsel:

SAMUEL STRICKLAND
U.S. Environmental Protection Agency
Office of General Counsel
1200 Pennsylvania Ave. NW
Washington, D.C. 20460

Counsel for Defendant